

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JOSHUA JAMES,)
Plaintiff,)
v.) JURY DEMAND
THE RITESCREEN COMPANY, INC.) CIVIL ACTION NO. _____
d/b/a RITESCREEN d/b/a
MI WINDOWS AND DOORS, INC.,)
Defendant.)

COMPLAINT

Comes now Plaintiff Joshua James ("Sgt. James") through counsel and for his Complaint states:

1. This is an action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

THE PARTIES

2. Sgt. James is a citizen of Tennessee and resides in Johnson City, Tennessee.

3. Defendant The RiteScreen Company, Inc. d/b/a RiteScreen d/b/a MI Windows and Doors, Inc. ("Rite Screen") is the largest manufacturer of window door screens and patio door screens in the United States. RiteScreen maintains a place of business at 704 12th Street, Smyrna, Tennessee. RiteScreen also maintains a place of business in Elizabethton, Tennessee.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant

to 38 U.S.C. §§ 4323(b).

5. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b) because RiteScreen maintains a place of business in this judicial district.

FACTS

6. Sgt. James began at RiteScreen as a machine operator in approximately April, 2007. As a machine operator, Sgt. James was required to produce steel parts for doors and windows.

7. Sgt. James has been a member of the National Guard since January, 2001. RiteScreen was aware that Sgt. James was a member of the National Guard.

8. Currently, Sgt. James is a Sergeant (E-5) and a member of the 776th Maintenance Company based in Elizabethton, Tennessee. Sgt. James specializes in wheel vehicle maintenance.

9. In August, 2008, Sgt. James went on Active Duty for Special Work ("ADSW") Orders to assist in preparing his military unit for deployment.

10. In October, 2008, Sgt. James was deployed to Iraq, specifically to support Operation Iraqi Freedom. He was stationed at Camp Taji for twelve (12) months to provide maintenance on equipment and vehicles for units serving in combat.

11. Prior to his deployment in October, 2008, Sgt. James gave RiteScreen proper notice under USERRA to alert the company that he was being called to duty.

12. Sgt. James served in Iraq for approximately one year.

13. In November 25, 2009, Sgt. James returned from active duty and timely notified RiteScreen of the end of his active duty status and his desire to return to work.

14. A representative in RiteScreen's Human Resources Department told Sgt. James that the company needed a week to reemploy him so that it could find a place in the company for the individual who took Sgt. James' position when he deployed.

15. Sgt. James went back to RiteScreen one week later, but was told that the company needed another week in which to reemploy him.

16. Sgt. James went back to RiteScreen a week later, which was his third attempt to be reemployed, and was told by a representative in RiteScreen's Human Resources Department that he had been laid off.

17. RiteScreen's failure to promptly reemploy Sgt. James violated his right to reemployment under USERRA.

CLAIM FOR RELIEF

Uniformed Service Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.

18. Sgt. James adopts and incorporates all of the prior allegations and averments stated before.

19. USERRA requires the prompt reemployment of any person returning from military service as soon as practicable under the circumstances. When Sgt. James returned from his active duty deployment, RiteScreen violated 38 U.S.C. §§ 4312 and 4313 of USERRA, among other ways, by failing or refusing to promptly reemploy him or find an equivalent position in his seniority status and pay.

20. RiteScreen violated 38 USC § 4311 of USERRA, among other ways, by discriminating against Sgt. James, denying him reemployment and other employment benefits, and discriminating against him (a) because of his membership, service, or obligation to perform service in, the uniformed services, and/or (b) because he took

action to enforce a protection afforded him under USERRA or to exercise a right provided for in USERRA.

21. Sgt. James' military service was a motivating factor in the adverse employment actions taken against him by RiteScreen in violation of 38 U.S.C. § 4311.

22. Moreover, the purported "lay-off" by RiteScreen was in fact a retaliatory discharge motivated in part by Sgt. James' exercise of his rights under USERRA and in violation of 38 U.S.C. § 4311.

23. Sgt. James has lost pay and benefits as a result of RiteScreen's refusal to promptly reemploy him to a status and position that he would have held with reasonable certainty had he remained continuously employed.

24. RiteScreen's refusal to fully comply with USERRA is willful and deliberate.

WHEREFORE, Plaintiff Prays:

1. That the Court find and make a declaratory judgment that Rite Screen violated Sgt. James' USERRA rights when it: (1) improperly refused to promptly reemploy Sgt. James at the conclusion of his deployment; and (2) retaliated against Sgt. James for exercising his USERRA rights by laying him off.

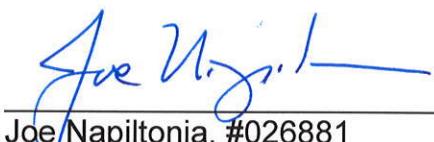
2. That RiteScreen be required to fully comply with the provisions of USERRA by reinstating Sgt. James at the level of seniority, status and pay that he would have enjoyed had he remained employed continuously with RiteScreen.

3. That Sgt. James be paid all lost pay and benefits as a result of RiteScreen's violation of USERRA in an amount not to exceed \$500,000.

4. That a judgment be entered awarding Sgt. James liquidated damages for willful violations of USERRA.

5. That a judgment be entered awarding attorneys' fees and litigation expenses to Sgt. James.
6. That a judgment be entered awarding Sgt. James pre- and post-judgment interest on the amount of lost compensation found due.
7. That the Court award such general relief as Sgt. James may be entitled.

Respectfully submitted,



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Dated: 04 January 2012